HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A No.2906 of 2004
Date of decision : 15.5..2007

Bhagwinder Singh **.....Appellant**

versus

Gurmail Singh and others **.....Respondents**

CORAM : HON'BLE MR. JUSTICE HEMANT GUPTA.

Present : Mr.M.L.Saggar, Senior Advocate with
Mr.G.S.Brar, Advocate for the appellant.

Mr.Arun Palli, Senior Advocate with
Mr.Tushar Sharma, Advocate for the respondents.

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ORDER

HEMANT GUPTA, J.

The defendant in second appeal aggrieved against the judgment and decree passed by the Courts below whereby defendant No.1 was restrained from interfering in the peaceful possession of the plaintiffs over the land comprised in Khasra Nos.24 & 25 as per the jamabandi for the year 1990-91. Both the Courts below have also granted a decree that the entry of Souni, 1991 in favour of the present appellant is without any notice to any of the co-sharers and, therefore, the plaintiffs are entitled to declaration.

The learned First Appellate Court granted the decree for injunction on the basis of statement of defendant-appellant appearing as DW-1, to the effect that the plaintiffs are in possession of Rect. No.64, Khasra Nos.24 & 25. On the basis of said statement, it was found that the entries in the revenue record stand rebutted.

The finding recorded by the Courts below that change in the Khasra Girdawari for the month of Souni, 1991 is without any notice to any of the co-sharers, could not be disputed by learned counsel for the appellant in any meaningful manner. The possession of the plaintiffs over Khasra Nos.24 & 25 is based on the statement of the defendant-appellant itself. Even the said finding cannot be said to be suffering from any patent illegality or irregularity which may raise any substantial question of law for consideration of this Court in second appeal.

Faced with the said situation, learned counsel for the appellant has submitted that any finding recorded by the learned Civil Court should not be taken into consideration by the Revenue Courts while considering the prayer of the appellant for partition. Since the plaintiffs have filed a suit for injunction on the basis of possession of the land, any finding recorded therein is relevant for the purpose of determination of the possession on the date of filing of the suit. Any disputes between the parties regarding partition, if any, is to be decided by the Revenue Court in accordance with law.

With the above observations, the present appeal stands disposed of.

(HEMANT GUPTA)
JUDGE

May 15, 2007
**mohinder*